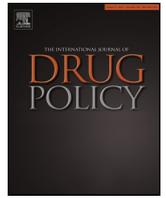




Contents lists available at ScienceDirect

## International Journal of Drug Policy

journal homepage: [www.elsevier.com/locate/drugpo](http://www.elsevier.com/locate/drugpo)

## Commentary

## The Canadian war on drugs: Structural violence and unequal treatment of Black Canadians

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## ARTICLE INFO

## Article history:

Received 10 August 2012

Received in revised form 4 October 2013

Accepted 6 December 2013

## Keywords:

War on drugs

Anti-Black stigma

Racial incarceration

Structural violence

Human rights

## ABSTRACT

This paper examines the impact of Canada's war on drugs on segments of the Black community, specifically with respect to the impact of structural violence, over-policing, and high incarceration rates. It offers evidence of the systemic nature of these dynamics by examining the early context of the war, growing stigma against Blacks, globalizing influences, and the punitive focus of funding and policy. The paper also explores how Black men have been identified as the main enemy and how drug control efforts have served to diminish the health, well-being, and self-image of Black men via discriminatory and inequitable treatment before the law. The current high rates of imprisonment of Black men are an indicator of systematic deprivation of significant social capital, which will perpetuate socioeconomic harm and cycles of violence. This commentary calls for an immediate dissolution of policies regulating the war on drugs as the first step in remedying the injustices experienced by Black Canadians. Due to the lack of Canadian data in this important area, the paper also emphasizes the critical need for more research to shed more light on the Canadian-specific complexities.

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## Introduction

Canada's Black community stands at the edge of a public health crisis precipitated by current drug war policy. In March 2012, the Federal Conservative government of Stephen Harper enacted Bill C-10 (the Safe Streets and Communities Act) that, among other things, intensified legal consequences for minor drug offences and further criminalized non-habitual drug use. It effectively expanded the Canadian government's longstanding low-level Canadian war on drugs (WOD) that previously targeted the poorest segments of Canadian society. The Bill complemented the Harper government's 2010 National Drug Strategy which prioritized 'get[ing] tougher on drug crimes' (Mosher, 2011; Tanovich, 2006; Wood, McKinnon, Strang, & Kendall, 2012).

Unbeknownst to many Canadians, Black communities in Canada have been the target of intensive policing since the inception of the WOD in the 1980s, especially in the province of Ontario where most Blacks reside<sup>1</sup>. The war was purportedly designed to apprehend

high-level drug dealers deemed to be a risk to public safety. In reality, low-level cannabis users and dealers were targeted; 62% of drug arrests have been for cannabis, with about 75% involving possession charges (Dauvergne, 2009; Mosher, 2011). A lack of systematic race related data across the various jurisdictions of Canada's criminal justice system makes it difficult to gauge the full extent of the war's impact on Canada's Black communities, especially with respect to racial profiling by police, prosecutorial decision making and pre-trial detention. Nonetheless, the limited correctional and policing data suggest that the impact is far-reaching and severe (Tanovich, 2006; Wortley & Tanner, 2004; Wortley & Owusu-Bempah, 2011).

A direct result of the inordinate police focus on Black communities has been a pattern of racialized mass incarceration, exemplified by a vast overrepresentation of Blacks within the federal offender population in prisons across Canada. In 2010–2011, Black inmates accounted for 9% of the federal prison population although Black Canadians only comprised 2.5% of the overall population (Wortley & Owusu-Bempah, 2011). This figure represents a 52% increase from 2000 to 2001 and the trajectory of growth seems certain to

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<sup>1</sup> The majority of the visible minority population resides in Ontario and British Columbia. The three largest groups are South Asians (24.9%), Chinese (24.0%), and Blacks (15.5%). Fifty-two percent of the Black visible minority group reported Caribbean origins, while another 42.4% reported African origins; Black visible

minorities also reported British Isles origins (11.6%), Canadian origin (10.9%) and French origins (4.1%) (Statistics Canada, 2008). The Province of Ontario has the highest proportion of Black Canadians due largely in part to historical migration patterns. There is little disaggregation of data for Canada's Black population that is routinely collected in other provinces. For example, the category for Canadians of Caribbean origin does not exist in the data for provinces other than Ontario.

continue. By contrast, the predominant White population, along with Asian Canadians, have been under-represented and declining within the prison system during the past decade, even though the WOD ostensibly targeted all Canadians (Trevethan & Rastin, 2004).

A similarly over-represented group, for whom data is systematically gathered, are the Aboriginal people of Canada. They comprise 3.8% of the national population but account for 21.5% of the incarcerated population (Office of the Correctional Investigator, 2012). Estimates indicate that the national adult Aboriginal incarceration rate, both federally and provincially, was 910 per 100,000 in 2010–2011 as compared to 109 per 100,000 for non-Aboriginal Canadians (Correctional Service of Canada, 2011). For Black Canadians, the incarceration rate in federal prisons is 3.4 times their proportion in the general population whilst the Aboriginal Canadian rate is approximately 5 times greater than their representation (Owusu-Bempah & Wortley, 2014). There is a similar disproportionate representation of Blacks in correctional facilities in the United States (Ramchand, Pacula, & Iguchi, 2006; Bobo & Thompson, 2010). The incarceration rate among African Americans (40.1%) was 2.9 times higher than their proportion in the general population (13.6%) in 2009 (West, 2010). Consequently, the estimated probability of the average African American going to prison is 26% higher than that of the average White American (Mukku, Benson, Alam, Richie, & Bailey, 2012). Given comparable contexts, these probabilities may apply to the average Black and Aboriginal Canadian.

This commentary argues that the WOD is intensifying structural violence towards Blacks that existed at more muted levels following the civil and human rights achievements of the 1960s, and offers a compelling rationale to terminate current tactics. By focusing the state's policing and wider criminal justice efforts on vulnerable communities with concentrated poverty, high unemployment and greater numbers of low income Black males, the Canadian state is arguable exacerbating precarious social determinants and impinging on the future prospects of Canada's Black population. This commentary assumes that race and/or ethnicity is a scientifically untenable cause of crime; rather, racialization is the key concept used in the analysis (Roberts, 2012). Racialization is understood as a "process of categorization through which social relations between people are structured by the signification of human biological characteristics in such a way as to define and construct differentiated social collectivities" (Definition by Robert Miles cited in Anthias, Yuval-Davis, Nira, 1993, p. 75). This contemporary process is buttressed by pre-existing racial stigma within the criminal justice system and society as a whole (Mosher, 1998). Historically, law enforcement officials have often considered Blacks to be responsible for the spread of illicit drug use in Canada (ibid). Authorities and public figures in Canada are thus drawn into a systemic historical, political, social and economic process whereby Black men who have long been stereotyped as criminals are now targeted as the enemy in the WOD, regardless of the involvement of other racial communities (Alexander, 2010; Tanovich, 2006; Welch, 2007). The direct consequence of drug war related racialization is a contemporary well-established association of Blackness with criminal tendencies (Alexander, 2010; Tanovich, 2006; Welch, 2007).

The Ontario Human Rights Commission found that racialization usually takes place without negative intent and/or racist design but generates negative outcomes that are equally discriminatory to racialized persons and the communities to which they belong (Ontario Human Rights Commission, 2003). Racialization strengthens systemic racism and reinforces structural violence (Tanovich, 2006). Consequently, Black Canadians experience a range of unequal life chances and associated inequities without clear evidence of individual actors deliberately instituting oppressive policies of racial profiling and racialized incarceration (Farmer, 2005; Commission on Systemic Racism, 1995; Torczyner, 1997,

2003). Law enforcement and/or criminal justice practices may serve as a source of violence in the everyday lives of the marginalized and oppressed (Farmer, 1997, 2005). Arbitrary police stops, searches and seizures, arrests and extended periods of incarceration in Canada certainly attest to this contention. Structural violence theory also suggests that the same social system may then blame individuals for their particular circumstances and the wider social inequalities (Galtung, 1990; Sarang, Rhodes, Sheon, & Page, 2010). Pervasive and widespread racial profiling, disparate gun violence and homicide rates among poor young Black men, may then be envisaged as the ultimate result of the criminal justice system's service as a structural mechanism of social suffering and unequal life chances.

The final section of the paper points to the health effects of the WOD, which has had a profound impact on the mental health and well-being of Black communities, specifically young Black men, as they are threatened by discriminatory and inequitable treatment under the law. Due to the limitations of scholarship and policy remedies that follow from the lack of essential race-related statistics in Canada, the commentary ends with a call for such data gathering by the Canadian state, for racial profiling to be made illegal, and for a greater international focus upon the various victims of Canada's WOD (Owusu-Bempah & Millar, 2010).

### **Structural violence: early decisions & human rights consequences**

#### *Structural vulnerabilities*

In the 1980s, Black Canadian life involved a range of challenges that can be characterized as structural vulnerabilities. Although similar levels of education existed between Black and White Canadians, 31% of Blacks lived below the poverty line compared to 10% of Whites. Forty percent of Black children aged 14 and under were also living below the poverty line compared with 19% of non-Black Canadians (Torczyner, 1997, 2003). At the time, the Black Canadian population was younger than the overall Canadian population, with 27% under the age of 14 compared to 21% for the general population, with a greater proportion of Black children living with a single parent than White children (46% vs. 18%) (Torczyner, 1997, 2003). During this period, the criminal justice issue of particular concern to Black communities was a greater share of police shootings involving Blacks. For instance, the 14 police shootings of Blacks which took place in Toronto between 1972 and 1992 (African Canadian Legal Clinic, 2012). Despite these vulnerabilities, the inmate population in the 1980s more closely reflected the proportion of Blacks in Canadian society (Brennan, 2011; Commission on Systemic Racism, 1995).

#### *Early decisions*

The pursuit of an American-style WOD was initiated in July 1982 by Brian Mulroney, culminating in a national drug strategy. Legislation was enacted in Canada in 1988 and 1989 banning the sale of drug paraphernalia and strengthening the police's power to seize the assets of arrested drug offenders (Erickson, 1992). The criminal justice approach was further strengthened through the 1995 Controlled Drugs and Substances Act, which enabled sweeping new police powers of arrest, search and seizure, as well as tough new maximum sentences for drug offences (Erickson & Hyshka, 2010). However, Mulroney's claim of a drug epidemic did not stand up to scrutiny. Cannabis, heroin, and cocaine use had been steadily declining following a peak in 1979. By 1991, rates were at their lowest in a generation (Adlaf, Smart, & Canale, 1991). Annual numbers of deaths caused by illicit drugs remained stable throughout

the 1980s (Jensen & Gerber, 1993). Given the declining use of illicit drugs at the time, there existed little reasonable cause to begin the WOD.

The WOD seemed to reflect political preferences for funding policing and prisons rather than social welfare and drug treatment. In 1992, enhanced law enforcement at both federal and provincial levels received \$400 million in funding; in contrast, financial support for treatment services was about \$88 million (Single, Robson, Xie, & Rehm, 1996). Funds for prevention and public education were cut to sustain the criminal justice focus, as were funds for social supports, such as public housing (Prince, 1998). By 2008, 70% of funding for Canada's national drug strategy was still being directed to law enforcement initiatives, despite public demand for increased treatment, education, and prevention efforts (DeBeck, Wood, Montaner, & Kerr, 2009; Riley, 1998). One wonders if the two billion dollars spent annually on the Canadian corrections system, approximately \$40,000–\$70,000 to house every offender (National Crime Prevention Centre, 1998), might not be better spent on prevention, treatment and harm reduction given the high prevalence of drug dependency amongst Canada's inmate population.

The Canadian government continues to support a punitive approach, pursuing an especially 'tough on cannabis' agenda, despite overwhelming evidence supporting alternative methods. In 1970, the Senate Special Committee on Illegal Drugs indicated that 3.5% of Canadians had reported ever using cannabis with 1% reporting use in the past year (Nolin, Kenny, Banks, Maheu, & Rossiter, 2002). Despite a criminalized approach to dealing with the drug, the number of cannabis users continued to grow. By 2004, approximately half of Canadians 15 years or older reported lifetime cannabis use and 14.1% reported past year use (Patton & Adlaf, 2005). Since 2004, the prevalence of most illicit drug use has remained steady, while crack cocaine and cannabis use has declined alongside a decrease in serious youth crimes (Statistics Canada, 2012). Nonetheless, mandatory minimum sentences (MMS) were implemented in 2012, imposing a minimum one-year sentence for trafficking cannabis, even though "social science research... has consistently demonstrated that MMS are ineffective, expensive and at times, unjust" (Canadian Psychological Association, 2012).

#### *Incarceration consequences*

Potentially disastrous public health consequences of the new MMS are implied by the hugely disparate numbers of incarcerated Blacks resulting from prior prosecution of the WOD. Although Black men represented only 1.25% of the Canadian population in 2010/11, they accounted for 7% of persons on probation or parole in the community (Warde, 2013). By 2013, the federal incarceration rate for Blacks had grown considerably from approximately 6.3% in 2003 to 9.5% – a 50% increase in a single decade (Sapers, 2013).

The overrepresentation of Blacks in the correctional system is also a problem at the provincial level, regardless of their proportion within the population. For instance, sizeable Black populations in Ontario and Nova Scotia represented 3.8% and 2.1% of provincial populations from 2010 to 2011, respectively, but accounted for 18% and 14% of admissions to Ontario and Nova Scotian jails (Owusu-Bempah & Wortley, 2014). This trend also holds true in provinces with less significant proportions of Blacks. In New Brunswick, Blacks only account for 0.6% of the population; nevertheless they represent 2.4% of the province's inmates. Similarly, in Alberta, Blacks represent 1.4% of the province's residents but 5% of its prison population (ibid).

The extreme differences in current incarceration rates which run along racial lines is a stark consequence of the longstanding WOD (Wortley & Tanner, 2005; Owusu-Bempah & Wortley, 2014). Black males in Ontario were admitted at about five times the rate of White males by 1993 largely due to this unnecessary war (Brennan,

2011; Commission on Systemic Racism, 1995). According to the Commission on Systemic Racism (1995) "one effect of the war on drugs, intended or not, has been the increase in imprisonment of black people... [because] of the intensive policing of low income areas in which black people live" (p. 82–83). These elevated Black incarceration rates raises the question: What levels of imprisonment will prove politically and morally unacceptable to Canadian officials and institutional authorities?

#### *Intensification of racial profiling*

Racial profiling has also become a pervasive reality for Black Canadians due to the WOD's particular focus on Black communities. The first contemporary reports of this officially sanctioned targeting surfaced in the 1990s with police officers being trained to explicitly profile certain ethnic and/or racial groups for law enforcement purposes (Bobo & Thomsson, 2006; Operation Pipeline & Racial Profiling, 2002; Tanovich, 2006). Canadian law does not explicitly permit this behavior; arbitrary stops and searches are specifically prohibited by the Canadian Charter of Rights and Freedoms (African Canadian Legal Clinic, 2012; Commission on Systemic Racism, 1995). However, such unwarranted searches, seizures, and arrests occur frequently (Ontario Human Rights Commission, 2003). Without reasonable cause, police stop Blacks on the pretext of enforcing various laws, such as traffic violations, but are actually in search of illegal drugs (Rankin, Quinn, Shephard, Simmie, & Duncanson, 2002a; Rankin & Winsa, 2013). African Canadian Legal Clinic (ACLC) lawyers have argued that, "young men are being profiled, monitored, over-scrutinized, and (no matter how politely it is done) treated like criminals" (2012, p. 3). Unreasonable dominance and submission are common features of such encounters (African Canadian Legal Clinic, 2012; Commission on Systemic Racism, 1995).

Disproportionate levels of remands, arrests, and incarceration have all been recorded and continue three decades into the WOD (Rankin et al., 2002a; Rankin, Quinn, Shephard, Simmie, & Duncanson, 2002b). The numbers and proportion of the Black population affected by the profiling practices are staggering. An internal police study in Montreal, Quebec found that between 2001 and 2006, 30–40% of young Black males in certain neighbourhoods were stopped and questioned by police, as compared with approximately 6% of Whites (Gordon, 2010). The study's author, Michel Charest, who was commissioned by the Service de Police de la Ville de Montreal, concluded quite frankly that "A large proportion of these checks can be judged as arbitrary or malicious." (ibid, p. 1). In Halifax, Nova Scotia, Black Canadians are contending with persistent 'consumer racial profiling' by police and other security personnel. A total of 24.7% of Black Canadians surveyed by the Nova Scotia Human Rights Commission reported being stopped and searched in malls compared to only 6.2% of Whites (Nova Scotia Human Rights Commission, 2013). Blacks in Toronto face an extreme form of racial profiling by police – the stopping, questioning and recording of personal details on cards known as '208s' – which occurs 2–17 times more frequently among Blacks than whites (Rankin & Winsa, 2011). It effectively subjects Black men to restrictions regarding where they can walk freely (African Canadian Legal Clinic, 2012). Recently, Toronto Star reporter, Jim Rankin, found that police records revealed that about 23,627 Black males or 22% of the Black male population (of 105,038) were carded (stopped and documented) between 2008 and 2012 in the process of general investigation (Rankin & Winsa, 2013).

Additional evidence for the claim of intensified racial profiling is drawn from a 2000 Toronto Youth Crime Victimization Survey which found that White high school students reported greater drug use and trafficking patterns than their fellow Black students (Wortley & Tanner, 2006). The survey found that 45% of White

students indicated lifetime cannabis use compared to 39% of Black students; 6% of White students reported lifetime use of cocaine or crack in contrast to 2% of Black students and 17% of White students reported selling illicit drugs during their lifetime vs. some 15% of Black students (Wortley & Tanner, 2006; Owusu-Bempah & Wortley, 2014). This survey has not been replicated; however its findings are still believed to be relevant (Owusu-Bempah & Wortley, 2014).

The discrepancy between the Toronto study's findings and criminal justice practices are illustrated by the 1995 Report of the Commission on Systemic Racism in the Ontario Criminal Justice System which detected an 1164% increase in the number of Black prison admissions for drug trafficking between 1986 and 1993 in tandem with a more modest increase of 151% for White admissions (Wortley & Tanner, 2005; Owusu-Bempah & Wortley, 2014). Prior to the 1995 release of this Report, it is conceivable that the Government of Canada could have been oblivious to the disproportionate Black incarceration rate resulting from its WOD. However, this report and several subsequent ones, such as *Paying the price: the human cost of racial profiling* (Ontario Human Rights Commission, 2003), the Toronto Star's 2002 and 2010 reports on racial profiling in Toronto (Rankin et al., 2002a; Rankin & Winsa, 2011), and findings about racial profiling of Black men by Montreal police between 2001 and 2006/7 (Gordon, 2010), highlighted the excessive and direct impact of the WOD on Black men in Canada. The current drug policy can therefore be construed as a more deliberate determination of racialized incarceration than was previously the case.

## Effects

The burden that follow from violations of the right to equal treatment before the law are extensive, resulting in damaged individual and family lives and devastated Black communities forced to cope with increasing violence over generations of incarceration. The pejorative associations of Blacks and crime have intensified levels of stigma that have existed for decades but remained tangential to the lives of Black Canadians, since few interacted with the criminal justice system (Mosher, 1998). Diminished self-esteem, perceived discrimination, and internalized stigma are likely the biggest health risk factors borne by Black men and youth (Caldwell, Kohn-Wood, Schmeelk-Cone, Zimmerman, & Chavous, 2004; Seaton, Caldwell, Sellers, & Jackson, 2009).

The mental health and well-being of poor Blacks is particularly impacted by the manner in which the WOD is conducted. An Ontario Human Rights Report, *Paying the price: The human cost of racial profiling*, describes the harms caused by racial profiling, such as increased fear, a sense of intimidation, reinforced anxieties, and enhanced feelings of helplessness and hopelessness may lead to suicidal thinking, depression, and drug use (Ontario Human Rights Commission, 2003). Although Canadian data is not available to quantify the harmful health effects of everyday encounters with the police, studies conducted in the US have found that the humiliation associated with racial profiling contributes to chronic psychological stress and undermines mental health (Harris, 2003; Alexander, 2010).

Many young Black men have also been traumatized by their interactions with militarized police units enforcing the WOD (Kerr, Small, & Wood, 2005). Drug sweeps involving take-downs at gun point in the middle of the night, with doors being broken down and family members handcuffed and verbally abused, have taken place below the public radar. The effect on mental and physical well-being of experiencing such trauma can contribute to decreased functioning, isolation, and increased dependence on drugs for relief (Small & Rankin, 2012).

The health burden includes a disproportionate share of addictions and mental health problems that remain unaddressed due to a lack of services and delayed help-seeking. Addictive behaviors are criminalized early, rather than treated early. More than one out of ten (13%) male offenders in federal custody have been identified with mental health problems at admission; this proportion has almost doubled since 1996/97 (7–13%) (Correctional Service of Canada, 2010). Of all inmates, between 40% and 60% have substance use disorders. Their untreated disorders have contributed to their criminal involvement and exposed them to a disproportionate amount of police attention (Alexander, 2010; Drucker, 2006). Former inmates also suffer compounded stigmatization due to both racial and offender status and many report poorer health as a direct result (Alexander, 2010; Mukku et al., 2012).

## Moral imperatives to end the war on drugs

The WOD disproportionately targets Black communities, even though large segments of the White population also engage in drug use at similar rates. Police and governments chose to target a publicly neglected enemy with a weak voice – poor Black men (Tanovich, 2006; Mosher, 1998). The WOD also demonized Black men and turned the Black population against itself, resulting in an intensification of interpersonal violence between young, poor Black men which serves as a reflection of deepening structural violence. Parents and elders in these communities have come to fear young Black men in much the same way as wider society, and are unmotivated to advocate on their behalf due to the stigma associated with their criminalization (Alexander, 2010; Galabuzi, 2009; Owusu-Bempah & Wortley, 2014). Not surprisingly, the WOD has eroded the value of social capital in poor Black communities, understood as investment in social relations with expectations of reciprocity (Dekker & Uslaner, 2001).

The situation in Montreal and Toronto are particularly illustrative. Despite an overall decrease in crime, homicide rates among Blacks in Montreal were estimated to be as high as 24 per 100,000, strikingly higher than their White counterparts at 3 per 100,000 (Ouimet, 1999). The homicide victimization rate among Blacks in Toronto reached four times the average city rate by 2007 (10.1 vs. 2.4 murders per 100,000) with the Black male homicide victimization rate at almost 12 times that of the overall population (28.2 vs. 2.4 per 100,000) (Owusu-Bempah & Wortley, 2014). Given such current disparities in inter-personal violence, the extended incarceration periods for drug offences promised by Bill C10 bodes ill for already vulnerable and stigmatized Black communities; especially given the strong association between incarceration and interpersonal violence (Johnson & Easterling, 2012; Lambie & Randell, 2013).

According to a wide range of international obligations, Black Canadians are legally entitled to the same treatment as White Canadians before the law. Canada is obliged to “pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms” (ICERD, 1965, Article 2.1) and to ensure that every individual has the right to equal protection and benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, age or mental or physical ability. This includes protection from arbitrary detention and a framework for thinking about Black inequality before the law (Tanovich, 2006). Therefore, it is essential that the Canadian government enact legislation and judicial mechanisms aimed at ending racial profiling and incarceration by its criminal justice institutions. As a critical preliminary step, systematic race related data gathering and reporting should be mandated for the criminal justice system. Police across Canada should be compelled to document the circumstances of all contact with civilians

along with the race, age and immigration status of the individuals they approach (Ontario Human Rights Commission, 2003; Tanovich, 2006). Notably, these records will not be used to characterize any particular racial or ethnic group's involvement in crime but rather, to determine whether and/or to what extent discrimination is present in the criminal justice system (Roberts, 2004; Johnston, 1994). Such data remains critical to both legal and social remedies; for without such basic information, the relevant criminal justice authorities will continue to contest the interpretations of human rights inequities and ignore political demands for change (Wortley & Owusu-Bempah, 2011).

The WOD has proven ineffective in eliminating and/or reducing drug use and has instead resulted in much health-related harm to drug users. Blacks with criminal records are now as systematically excluded from mainstream Canadian life as their early 20th century ancestors before them (Erickson & Goodstadt, 1979; Walker, 2005). The WOD, purportedly aimed at reducing the harms associated with illicit drug use, has become a source of multiple harms undermining the fabric of life for many of Canada's most vulnerable Black communities. Ultimately, this war must be brought to an untimely end.

### Conflict of interest statement

None declared.

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